IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 254 of 2001(B)

OP(MV).154/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANT/PETITIONER:

V.MANI, S/O.VELU, EDATHARA HOUSE, VILAKKATHAMKODE, VADAKKUNCHERY, PALGHAT, C/O.VIBIN C.M., CHALISSERRY HOUSE, KUTTANELLUR P.O., ELAMTHURUTHY, THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.A.K.PREETHA

RESPONDENTSRESPONDENTS:

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1. M.JANAKI DEVI, W/O.O.P.UNNI MENON, ACHUTHALAYAM, P.O.PALLITHARA, THRITHALA.

2. AJITHKUMAR, S./O.LATE UNNI, MANOTHUPARAMBIL HOUSE, ANNAKARA, KUTTIPURAM.

3. THE ORIENTAL INSURANCE COMPANY LIMITED, PATTAMBI, PALGHAT DISTRICT.

R3 BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.254 of 2001

Dated, this the 18th day of December, 2007

JUDGMENT

The petitioner in O.P.(MV) No.154/1998 on the file of the Motor Accidents Claims Tribunal, Thrissur is the appellant. Appellant met with a motor vehicle accident and sustained injuries. He was a pillion rider in a scooter bearing registration No.KL-9/C 6270. A collision took place between that scooter and a stage carriage bus bearing registration No.KL.9/B 2324 driven by the second respondent. Petitioner filed Original Petition impleading the owner, driver and insurer of the bus, claiming Rupees one lakh as compensation. The owner and driver remained exparte. Insurer alone contested the matter. Negligence alleged against the second respondent driver was denied. It was contended that the accident occurred due to the negligence of the driver of the scooter alone. It was also contended that he was not holding a valid driving licence at the time of accident. Quantum of damages claimed was disputed. Tribunal found that the appellant sustained injuries in a motor vehicle accident. It was found that normally the appellant would have been entitled to get a compensation of Rupees one lakh. It was found that it was a case of contributory negligence and the driver of the scooter was also made liable to pay contribution. Tribunal fixed the liability to 50:50 and permitted the appellant to recover Rs.50,000/- from the third

respondent. Complaining that the quantum of compensation awarded is very low this appeal is filed by the petitioner himself.

2. Learned counsel appearing for the appellant has argued that FIR was registered against the second respondent alone and in the final report also he was made as the accused. At the place of accident the road lies north-south. The width of the tarred portion of the road is 6.72 metres. Scooter was coming from south to north and the bus was coming from north to south. The right side of the scooter was western side of the road. But going by the description given in the mahazer the place of accident is eastern half of the road. So the Tribunal found that the rider of the scooter also contributed negligence. Finding of the Tribunal that it was a case of composite negligence is correct and does not call for any interference. But the materials on record shows that the bus was driven in excessive speed and rash or negligent manner. So the Tribunal ought to have fixed the liability at 65% on the second respondent and 35% on the rider of the scooter. The appellant is entitled to get 65% of the total compensation already fixed by the Tribunal, i.e., 15% more what is fixed by the Tribunal. Tribunal found that the total compensation would have been Rupees one lakh and the appellant/petitioner is entitled to recover Rs.50,000/-. So the appellant is entitled to get Rs.15,000/- more with interest. I do not find any reason to interfere with any other findings of the Tribunal.

In the result, appeal is allowed in part. An award is passed in favour of the

appellant allowing him to recover an amount of Rs.15,000/- more with 6% interest per annum from the date of petition till the date of realisation. Third respondent insurer is directed to deposit the amount. On deposit the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.254 of 2001

JUDGMENT

18th December, 2007.